IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 5347 of 2007(J)

OS.55/2004 SUB COURT-I,KOLLAM
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PETITIONER:

SANDHYA BAIJU, W/O. LATE BAIJU,
SANDHYA NIVAS, THEKKEVILA P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

RESPONDENTS:
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1. BINDHU SUNIL, AGED 33 YEARS,
W/O.SUNIL, BINDHUVIL, VIDHYA NAGAR,
MANGAD P.O., KOLLAM.

2. SUNIL, S/O.SAHADEVAN,
BINDHUVIL, VIDHYA NAGAR,
MANGAD P.O., KOLLAM.

BY ADV. SRI.DILEEP P.PILLAI
SMT.SHAIMA .U.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.55/2004 FILED BEFORE THE SUB COURT-I, KOLLAM.

EXT.P2: COPY OF THE WRITTEN STATEMENT FILED IN O.S.55/2004 BY THE PETITIONER.

EXT.P3: COPIES OF THE I.A.NO.1916/2004 AND THE AFFIDAVIT THERETO FILED BEFORE THE SUB COURT-I, KOLLAM.

EXT.P4: COPIES OF THE I.A.No.1288/2005 AND THE AFFIDAVIT THERETO FILED BEFORE THE SUB COURT-I, KOLLAM.

EXT.P5: COPY OF THE I.A.NO.537/2007 AND THE AFFIDAVIT THERETO FILED BEFORE THE SUB COURT-I, KOLLAM.

EXT.P6: COPIES OF THE I.A.589/2007 AND THE AFFIDAVIT THERETO FILED BEFORE THE SUB COURT-I, KOLLAM.

EXT.P7: COPY OF THE ORDER IN I.A.NO.1916/04 IN O.S.55/04 DATED 17.03.05 THE PRL. SUB COURT, KOLLAM.

EXT.P8: COPY OF THE ORDER IN I.A.NO.1288/05 IN O.S.55/04 DATED 07.02.07 THE PRL.SUB COURT, KOLLAM.

EXT.P9: COPY OF THE ORDER IN I.A.NO.537/07 IN O.S.55/04 DATED 09.02.07 THE PRL.SUB COURT, KOLLAM.

EXT.P10: COPY OF THE ORDER IN I.A.NO.589/07 IN O.S.55/04 DATED 13.02.07 THE PRL.SUB COURT, KOLLAM.

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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W.P.(C).No.5347 OF 2007

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Dated this the 15th day of June, 2007

JUDGMENT

This writ petition is filed seeking to set aside the orders of the Subordinate Judges Court, Kollam on Exts.P3,P4,P5 and P6 applications made by the defendants in O.S. No.55/2004 on the file of the Sub Court, Kollam.

Heard, the counsel appearing for both sides in detail. The suit is one for realisation of the amount due on the basis of cheque issued. The first defendant contended that the cheque relied upon by the plaintiff is not a genuine one and it is a forged one as it does not contain her signature in the cheque. The case of the plaintiff is that the cheque was signed by the husband of the first defendant as well as the first defendant. A perusal of the written statement filed by the defendant would show that they admitted the signature of the deceased husband in some paragraphs of the written statement in some blank cheques but they never admitted the signature of the first defendant in the cheque. Suit is based on a cheque and if it is found that the first defendant had not signed the cheque, it is a

material alteration under Section 87 of the Negotiable Instruments Act which will result in dismissal of the suit. So, for a proper determination of the case, it is necessary to find out whether the first defendant had executed the cheque as contended by the plaintiff. The first defendant moved an application for sending the cheque for comparison of signature by an expert. Unfortunately, it was dismissed for default and later he moved an application to review the order and the court dismissed the review application on the ground that there was no representation and further also directed the party in case of necessity, to file a petition under Section 73 of the Indian Evidence Act so as to enable the court to make a comparison of the signature. I am aware of the fact that Section 73 of the Evidence Act permits the court for comparison of the signature and it has to be remembered that court is not an expert of comparison of signature and there are innumerable number of decisions of the Apex Court wherein it is held that the result of comparison of the signature by the court shall not be a sole criteria in deciding the case but it shall be looked into only for the purpose of corroboration if there are material evidence

available before the court . So it is a very hazardous process which the court should not ordinarily venture to do. Here the amounts involved is huge and there is dispute with respect to execution of the documents by first defendant. It is worthwhile to get report of the expert so that the court can have the scientific materials available regarding the signature. Just because the trial of the case will be prolonged one should not shut out the material evidence that will be very important for the determination of the case. Therefore, all the orders passed by the learned Subordinate Judge, Kollam, are set aside and the petition for permitting the first defendant to send her signature for comparison by an expert is allowed. As far as possible the court shall send the admitted signature of the first defendant ie. a signature put by her prior to the institution of the suit. The same may be directed to be produced and then send to the expert for comparing the admitted signature with disputed signature. It is obvious for the reason that there will be a tendency to change the signature after denying execution of the document. So it is the duty of the first defendant to produce before the court her signature prior to the institution of the suit

or even before the institution of the courts proceedings. If such a signature is produced, it may be sent at the expenses of the first defendant for the time being and ultimate liability may be decided depending upon the result of the suit. The learned Subordinate Judge is directed to reopen the case and act in accordance with the directions contained here in.

The writ petition is disposed of accordingly.

M.N.KRISHNAN,JUDGE

dvs